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exemption under the PSM standard.**[Standard Interpretations - Table of Contents](#)**• Standard Number:** 1910.119; 1910.119(a)(2)(i)

December 12, 2005

Mr. Jay W. Schwall  
Stephen B. Ogle & Associates  
823 North Street  
P. O. Box 275  
Caldwell, OH 43274

Dear Mr. Schwall:

This is in response to your letter dated June 21, 2005, addressed to the Philadelphia Regional Office of the Occupational Safety and Health Administration (OSHA). Your letter was forwarded to the Directorate of Enforcement Programs for response. You indicated in your letter that you deal with a company that warehouses chlorine and sulfur dioxide gases in compressed gas cylinders, and you wanted clarification with respect to the retail facility exemption under the Process Safety Management (PSM) standard at 29 CFR 1910.119. This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question not delineated within your original correspondence. We apologize for the delay in our response. Your paraphrased question and our response are provided below.

**Question:** I understand that a retail facility is defined as an establishment which obtains more than half (>50%) of their income from direct sales to end users. Does the income referenced above mean the income from all sales, or income from sales of just the chemical covered under the PSM standard?

**Response:** OSHA considers an establishment to be qualified under the PSM "retail facilities" exemption, if that establishment receives more than half of its income from the direct sales of the PSM-covered highly hazardous chemical (HHC) to end users. The income referenced above applies to the income obtained from the sales of PSM-covered HHCs, and not the total sales of the establishment. For example, establishment A distributes and sells HHC X to a chain of supply stores and to homeowners (end users). Establishment A obtains 60% of its income from the sale of HHC X to the chain of supply stores

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- these supply stores are not the direct end users or consumers. The other 40% of the income obtained from the sale of HHC X is from sales to homeowners. Since establishment A's income from homeowners (end users) is less than 50%, establishment A does **not** qualify for the PSM retail exemption. In addition, if establishment A sells other products besides PSM-covered chemicals, the income derived from the sale of the other products is not part of the determination of whether establishment A qualifies for the retail exemption.

Thank you for your interest in occupational safety and health. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at [www.osha.gov](http://www.osha.gov). If you have any further questions, please feel free to contact the Office of General Industry Enforcement at (202) 693-1850.

Sincerely,

Richard E. Fairfax, Director  
Directorate of Enforcement Programs

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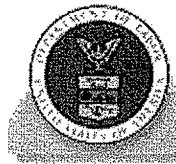
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Standard Interpretations

**01/26/2001 - Retailer exemption from the PSM standard for anhydrous ammonia dealers.**

*Process Safety Management*

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• **Standard Number:** 1910.119(a)(2)(i)

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

January 26, 2001

J.D. Varn III, Vice-President  
Varnco, Inc.  
P.O. Box 97  
Ehrhardt, South Carolina 29081

Dear Mr.Varn:

Thank you for your November 16, 2000 letter to the Occupational Safety and Health Administration's (OSHA's) Directorate of Compliance Programs (DCP). This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question not delineated within your original correspondence. You had a question regarding OSHA's **Process Safety Management of Highly Hazardous Chemicals, Explosives and Blasting Agents** Standard (PSM), 29 CFR 1910.119. Your specific question is related to the PSM retail exemption, 29 CFR 1910.119(a)(2)(i).

**Background:** You buy fertilizer, including anhydrous ammonia (NH<sub>3</sub>), and sell directly to your customers, who are farmers. Approximately 75% of your sales are directly to these farmers and the other 25% is to wholesalers who then sell to farmers. You have never had an on-site accident.

**Question:** Based on the above, is our facility excluded from employer compliance with PSM standards?

**Response:** Your covered process is exempt from PSM requirements based on the PSM retail exemption, 29 CFR 1910.119(a)(2)(i), as follows:

1. a **highly hazardous chemical** (HHC), NH<sub>3</sub>, exists in your facility;

2. an assumed threshold quantity (TQ) of NH<sub>3</sub> exists in a **process** at your facility (if this is not true, your facility does not contain an NH<sub>3</sub> PSM-covered **process**);
3. as a HHC is contained in a **process** at greater than a TQ, you have a PSM-covered process; and
4. you meet OSHA's retail exemption standard because you obtain more than half (> 50%) of your income, i.e., 75%, from sales of NH<sub>3</sub> to direct end users - farmers.

For further information, please refer to a previous OSHA interpretation letter on this matter to Mr. Gary Myers, dated June 19, 1992. You may access this letter through OSHA's website at [http://www.osha-slc.gov/OshDoc/Interp\\_data/I19920619A.html](http://www.osha-slc.gov/OshDoc/Interp_data/I19920619A.html).

Please note, you stated, "**We have never had an on-site accident.**" While I certainly applaud your accident record, the fact a facility has not had a release of an **HHC** is not a criteria which is used to determine PSM coverage.

The State of South Carolina administers its own occupational safety and health program under a plan approved by Federal OSHA. States are required to enforce standards which are at least as effective as the Federal standards, but some specific requirements and their interpretations may vary. To determine the State requirements applicable to your facility, I suggest that you contact:

Rita McKinney, Director  
South Carolina Department of Labor,  
Licensing, and Regulation  
Koger Office Park, Kingstree Building  
110 Centerview Drive  
PO Box 11329  
Columbia, South Carolina 29210

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please feel free to contact the Office of General Industry Compliance Assistance at (202) 693-1850.

Sincerely,

Richard E. Fairfax, Director  
Directorate of Compliance Programs  
cc: Rita McKinney  
Cindy Coe

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Standard Interpretations

**06/19/1992 - PSM standard and fertilizer storage and mixing facilities.**

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• **Standard Number:** 1910.119

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June 19, 1992

Mr. Gary Myers President  
The Fertilizer Institute  
501 Second Street, N.E.  
Washington, D.C. 20002

Dear Mr. Myers:

Thank you for your letter of March 27 to Acting Assistant Secretary Dorothy L. Strunk, requesting interpretations and clarifications of the Final Rule on Process Safety Management (PSM) of Highly Hazardous Chemicals, 29 CFR 1910.119, published in Volume 57, Number 36 of the Federal Register on Monday, February 24, 1992. In your letter, you requested written confirmation that facilities at which fertilizer is stored or at which fertilizer is blended for direct sale to end users are retail facilities which are excluded from employer compliance with the PSM standards.

The facilities you describe sell directly to end users or consumers, for example, farmers. Also, you note that these facilities comply with the Occupational Safety and Health Administration standards at 29 CFR 1910.111, for the storage and handling of anhydrous ammonia. With respect to enforcement of the PSM Standard, a retail facility means an establishment, which would otherwise be subject to the PSM standard, at which more than half of the income is obtained from direct sales to end users. Fertilizer establishments meeting this criterion would be exempt from the requirements of 29 CFR 1910.119.

Thank you for your interest in occupational safety and health. If we may be of further assistance, please contact us.

Sincerely,

Patricia K. Clark, Director  
Directorate of Compliance Programs

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